FILE NO. A04-636

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against DANIEL MARTIN LIEBER, a Minnesota Attorney, Registration No. 207731.	**AMENDED AND SUPPLEMENTARY PETITION FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this amended and supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a March 26, 2004, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

FIRST COUNT

Pre-Settlement Funding Matter

A. Josie Barnett

1. In November 1998 Josie Barnett retained respondent to represent her in a personal injury action arising out of a November 6, 1998, automobile accident.

2. In October 1999 Barnett asked respondent if he could loan her some money pending settlement of her claim.

3. On October 22, 1999, respondent gave Barnett a check for $250. It was intended that the $250 was to be a loan to be paid out of the proceeds of Barnett's personal injury action.

4. At the time respondent delivered the $250 to Barnett, respondent did not disclose and transmit to Barnett in writing the terms of the loan transaction, did not notify Barnett in writing that independent counsel should be considered, and did not obtain a written consent from Barnett to the transaction in light of the conflict of interest created thereby.

5. In November 1999 Barnett again asked respondent if he could loan her additional monies pending settlement of her claim. Respondent told Barnett that he could loan her additional funds.

6. On November 11, 1999, respondent and Barnett met in respondent's office. Respondent gave Barnett a check for $1,750 drawn on respondent's business account. At that same meeting respondent had Barnett initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of $2,000 advanced to Barnett. The $2,000 advance consisted of the $250 given to Barnett on October 22, 1999, and the $1,750 given to Barnett on November 11, 1999.

7. The transaction was not fair and reasonable. The transfer documents obligated Barnett to pay an entity entitled, "Pre-Settlement Funding (PSF) a Minnesota company" (hereinafter PSF) the $2,000 advanced plus an increased amount calculated at the rate of 15 percent per month on the $2,000 advanced.

8. The terms on which respondent acquired his interest in the $2,000 advance to Barnett were not fully disclosed and transmitted in writing to Barnett. The transfer documents falsely listed PSF as the entity advancing the full $2,000 to Barnett. In fact, all of the funds were paid from respondent's business account, not from PSF. Although respondent maintains that Paul Ruud, on behalf of PSF, reimbursed him for $1,750 of

the funds advanced, he acknowledges that $250 of the total advanced to Barnett came from him personally.

9. Prior to execution of the transfer documents respondent did not notify Barnett in writing that independent counsel should be considered nor did he give her a reasonable opportunity to seek the advice of independent counsel.

10. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Barnett to the transaction in light of the conflict of interest created thereby.

11. The transfer documents contain a number of handwritten notations that were not present on the documents at the time Barnett executed them. Respondent never gave Barnett the original or a copy of the transfer documents.

12. Although the transfer documents purport to memorialize a transaction between Barnett and PSF, the transaction appears to be between respondent and Barnett. Facts indicating that the transaction was between respondent and Barnett include:

a. The transfer documents signed by Barnett are also purportedly signed by Paul Ruud, who is designated therein as a "representative of PSF Corporation."

b. Paul Ruud is an employee of respondent. Ruud was employed by respondent from April 1998 through November 1, 1999, and again from January 2002 through the present.

c. Barnett never met with, or spoke with, Paul Ruud regarding the $2,000 advance.

d. Ruud's signatures on the transfer documents and on a June 13, 2000, letter to Barnett's successor counsel discussing the $2,000 advance were placed on those documents by respondent.

13. On January 24, 2000, Barnett discharged respondent as her attorney and retained new counsel. In March 2000 respondent asserted an attorney's lien in the amount of $2,266.66 for fees and $279.75 for costs. Respondent used Barnett's purported obligation to PSF to advance his own interests in collecting on his attorney's lien.

14. In January 2003 respondent accepted payment of $2,279.75 as full satisfaction of his claim for attorney's fees and expenses in Barnett's personal injury claim and in repayment of the PSF advance. The agreement specifically called for $2,000 of the $2,279.75 payment to be applied to the PSF claim.

15. None of the $2,279.75 paid to respondent by Barnett was paid to Ruud or PSF. Respondent retained all of the $2,279.75.

B. Charles Garner

16. In December 1998 Charles Garner retained respondent to represent him in a personal injury action arising out of a December 17, 1998, automobile accident.

17. On December 1, 1999, respondent gave Garner a check for $1,000 drawn on respondent's business account as an advance against settlement of his personal injury claim. That same day, respondent had Garner initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of $1,000 advanced to Garner, allegedly by PSF.

18. The transaction was not fair and reasonable. The transfer documents obligated Garner to pay PSF the $1,000 advanced plus an increased amount calculated at the rate of 15 percent per month on the $1,000 advanced.

19. The terms on which respondent acquired his interest in the $1,000 advance to Garner were not fully disclosed and transmitted in writing to Garner. The transfer documents falsely listed PSF as the entity advancing the $1,000 to Garner. In fact, all of

the funds were paid from respondent's business account, not from PSF. PSF had no interest in the transaction.

20. Prior to execution of the transfer documents respondent did not notify Garner in writing that independent counsel should be considered nor did he give him a reasonable opportunity to seek the advice of independent counsel.

21. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Garner to the transaction in light of the conflict of interest created thereby.

22. In September 2000 respondent negotiated a settlement of Garner's personal injury claim for a total of $7,750. Out of that settlement, in addition to deducting $2,583.33 in attorney's fees, respondent paid himself $1,589.78 in satisfaction of the Garner/PSF advance. This represents a return to respondent of 74 percent per annum on the amount advanced.

C. Dora Sanders

23. On March 26, 1998, Dora Sanders retained respondent to represent her in a personal injury action arising out of a March 2, 1998, automobile accident.

24. On December 22, 1999, respondent gave Sanders a check for $1,000 drawn on respondent's business account as an advance against the settlement of her personal injury claim. That same day, respondent had Sanders initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of $1,000 advanced to Sanders, allegedly by PSF.

25. The transaction was not fair and reasonable. The transfer documents obligated Sanders to pay PSF the $1,000 advanced plus an increased amount calculated at the rate of 15 percent per month on the $1,000 advanced.

26. The terms on which respondent acquired his interest in the $1,000 advance to Sanders were not fully disclosed and transmitted in writing to Sanders. The transfer documents falsely listed PSF as the entity advancing the $1,000 to Sanders. In fact, although respondent claims that Ruud provided $500 of the advance to Sanders, all of the funds were paid from respondent's business account, not from PSF.

27. Prior to execution of the transfer documents respondent did not notify Sanders in writing that independent counsel should be considered nor did he give her a reasonable opportunity to seek the advice of independent counsel.

28. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Sanders to the transaction in light of the conflict of interest created thereby.

29. In May 2000 respondent negotiated a settlement of Sanders' personal injury claim for a total of $14,965.10. Out of that settlement, in addition to deducting $4,988.36 in attorney's fees, respondent paid himself $1,900 in satisfaction of the Sanders/PSF advance. This represents a return to respondent of 196 percent per annum on the amount advanced. Respondent did credit Sanders with a $250 "courtesy law office discount."

30. Respondent asserts that on December 20, 2000, seven months after distribution of the Sanders settlement proceeds, he paid Ruud $500 as his share of the Sanders/PSF transaction.

D. Mark Gaston

31. On May 7, 1999, Mark Gaston retained respondent to represent him in a personal injury action arising out of an April 30, 1999, automobile accident.

32. On February 11, 2000, respondent gave Gaston a check for $1,500 drawn on respondent's business account as an advance against the settlement of his personal injury claim. That same day, respondent had Gaston initial and sign a series of

documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of $1,500 advanced to Gaston, allegedly by PSF.

33. The transaction was not fair and reasonable. The transfer documents obligated Gaston to pay PSF the $1,500 advanced plus an increased amount calculated at the rate of 15 percent per month on the $1,500 advanced.

34. The terms on which respondent acquired his interest in the $1,500 advance to Gaston were not fully disclosed and transmitted in writing to Gaston. The transfer documents falsely listed PSF as the entity advancing the $1,500 to Gaston. In fact, all of the funds were paid from respondent's business account, not from PSF. PSF had no interest in the transaction.

35. Prior to execution of the transfer documents respondent did not notify Gaston in writing that independent counsel should be considered nor did he give him a reasonable opportunity to seek the advice of independent counsel.

36. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Gaston to the transaction in light of the conflict of interest created thereby.

37. In June 2000 respondent negotiated a settlement of Gaston's personal injury claim for a total of $6,000. Out of that settlement, in addition to deducting $2,000 in attorney's fees, respondent paid himself $2,625 in satisfaction of the Gaston/PSF advance. This represents a return to respondent of 200 percent per annum on the amount advanced. Respondent did credit Gaston with a $246.46 "law office courtesy discount."

38. Respondent's conduct violated Rules 1.7, 1.8(a), (e), and (j), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

False and Misleading Statements

39. Prior to and during the course of the disciplinary investigation in the Barnett matter, respondent made false statements regarding the Barnett transaction, some under oath, to the Director and others, and induced Paul Ruud to testify falsely under oath regarding the transaction.

40. On October 29, 2003, the Director took the sworn statement of Paul Ruud. Respondent was present throughout the questioning of Ruud. Prior to the sworn statement, respondent gave to Ruud for his review and use in formulating his testimony the letters respondent had submitted to the Director in the Barnett matter.

41. At the October 29, 2003, sworn statement, with respondent's knowledge and encouragement, Ruud falsely testified under oath that:

a. On November 11, 1999, he gave Barnett $250 in cash as part of the $2,000 advance.

b. He advanced the full $2,000 to Barnett.

c. He personally signed the transaction documents.

d. He personally met with Barnett on November 11, 1999.

e. He received nothing in return for the $2,000 advanced to Barnett.

In fact, Ruud did not give Barnett $250 in cash, the $250 portion of the advance to Barnett came from a check drawn by respondent on his business account; Ruud did not meet with Barnett on November 11, 1999, respondent, not Ruud, signed Ruud's name to the transaction documents, and respondent paid Ruud at least a partial reimbursement of the funds advanced.

42. On January 22, 2004, the Director took respondent's sworn statement. At that sworn statement respondent falsely testified under oath that:

a. He told Barnett that he would not be able to loan her money against her case.

b. Ruud gave Barnett $250 cash on November 11, 1999.

c. John Farr, another of respondent's employees, told him that he [Farr] had signed Ruud's name to the transaction documents.

d. Farr told him that he [Farr] signed Ruud's name to a June 13, 2000, letter to Kristi Paulson, Barnett's successor counsel.

e. He and Ruud, during the period November 1999 to January 2002, did not engage in any sort of business activities together.

f. He told Ruud on or after January 21, 2003, that he would not be receiving back any of the money advanced to Barnett.

In fact, respondent did loan Barnett money against her case, Ruud did not give Barnett $250 on November 11, 1999, respondent signed Ruud's name to the transaction documents and to the June 13, 2000, letter, respondent and Ruud jointly participated in the Barnett/PSF and Sanders/PSF transactions, and respondent did, prior to January 21, 2003, pay Ruud funds intended to reimburse him for the Barnett advance.

43. On June 13, 2000, in response to an inquiry from Kristi Paulson, respondent falsely told Paulson, "Ms. Barnett was issued a cash advance of $2,000 and the current balance owed is $4,400." In fact, the funds advanced to Barnett were not in the form of a "cash advance." Further, the letter, although purportedly from and signed by Ruud, was composed in part by respondent and respondent signed Ruud's name to the letter.

44. On May 29, 2001, Charles T. Hvass, Jr. wrote to respondent on behalf of Barnett. In that letter Hvass asked respondent about the whereabouts of the check evidencing the "loan" to Josie Barnett.

45. On June 1, 2001, respondent wrote back to Hvass falsely stating, "I wish to advise that the funds advanced to Ms. Josie Barnett where [sic] in the form of cash." In fact, as set forth above, respondent advanced all of the funds by checks drawn on his business account. Respondent intentionally made this false statement to Hvass to

conceal the fact that the funds advanced were in the form of checks drawn on his business account.

46. On September 3, 2003, the Director wrote to respondent inquiring about his representation to Hvass that the funds advanced were in the form of cash.

47. On September 9, 2003, respondent replied to the Director's inquiry, failing to disclose in his response that he intentionally misled Hvass as to the source of the funds. Instead, respondent falsely stated, "I wrote that the funds were advanced in the form of cash because I recalled cash."

48. On February 19, 2003, in a letter to the Director, respondent falsely stated:

> I did not make a loan to Ms. Barnett.
>
> * * *
>
> When Ms. Barnett pleaded with me for a loan, I put her in contact with Mr. Ruud, and Mr. Ruud advanced funds to Ms. Barnett through his company, Pre-settlement Funding.
>
> * * *
>
> I did not make the loan, nor did I guarantee the loan.
>
> * * *
>
> As I never loaned money to a client, I would appreciate your dismissing this complaint.

On May 14, 2003, in a letter to the Director, respondent falsely stated:

> When Ms. Barnett pleaded with me for a loan, I put her in contact with Mr. Ruud and Mr. Ruud advanced funds to Ms. Barnett through his company, Pre-settlement Funding (PSF). There were a few other companies doing the same type of business and she chose Mr. Ruud as he was local, had better rates, and could get her the money faster than the company in Duluth, New Jersey, or Las Vegas.
>
> * * *

> I did not make the loan, nor did I guarantee the loan . . . . When Ms. Paulson contacted me to satisfy my attorney lien, I said I would talk to Mr. Ruud about his interest, which he agreed to drop.
>
> As I never loaned money to a client, I would appreciate your dismissing this complaint.

On June 2, 2003, in a letter to the Director, respondent falsely stated:

> Per your recent request, I wish to advise that at the end of the transfer and conveyance of proceeds and security agreement signed by Ms. Barnett and Mr. Ruud are a number of my handwritten notations clearly explaining to Ms. Barnett her obligation.
>
> Apparently, Ms. Barnett was scheduled to come into my office on 11/12/99, to obtain a cash advance from PSF. When the client arrived a day early, Mr. Ruud happened to be here. Unfortunately, Mr. Ruud had only $250.00 with him and I advanced him the balance. . . . Mr. Ruud states that this was his one and only advance. I did not make the loan, nor did I guarantee the loan.

On September 9, 2003, in a letter to the Director, respondent falsely stated:

> That with the exception of Ms. Barnett's initials and signature, and the signature of Mr. Ruud, all other notations on Exhibit B, were made by me.

In fact, respondent personally advanced funds to Barnett, Ruud had no contact of any sort with Barnett regarding the advance prior to November 11, 1999, respondent had loaned money to other clients, Ruud did not drop his interest in the Barnett/PSF transaction but rather had been reimbursed by respondent for a portion of the funds advanced, and Ruud did not advance Barnett $250 cash on November 11, 1999.

49. Respondent's conduct violated Rules 3.4(b), 4.1, 8.1(a)(3), and 8.4(a), (c), and (d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 13, 2004.

KENNETH L. JORGENSEN
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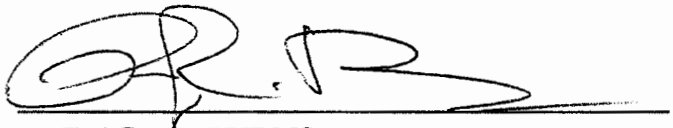
and



PATRICK R. BURNS
SENIOR ASSISTANT DIRECTOR
Attorney No. 134004

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: July 16, 2004.

KENT GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD